

**Congress of the United States**  
Washington, DC 20515

February 14, 2022

The Honorable Deb Haaland  
Secretary of the Interior  
U.S. Department of the Interior  
1849 C Street NW  
Washington, D.C. 20240

Dear Secretary Haaland:

We write to thank you for your recent actions to restore protections for birds under the Migratory Bird Treaty Act (MBTA), and to initiate a rulemaking process to consider an authorization program for incidental take under the MBTA. We appreciate the establishment of a general permitting framework and urge the final rulemaking to implement such a program.

The recent oil spill that occurred off the coast of Orange County, California led to significant environmental damage and killed numerous birds, demonstrating the continuing need to have tools like the MBTA in place that assist with accountability and recovery. When negligent harm has occurred to birds, as in with the Exxon Valdez and BP Deepwater Horizon oil spills, the negligent parties were fined and funds dedicated to habitat restoration and recovery were invested into the North American Wetlands Conservation Fund to benefit migratory birds.

Since the signing of the migratory bird treaties and passage of the MBTA more than a century ago, this foundational law has provided necessary protections for birds and formed the basis for bird conservation efforts led by the Department of the Interior (DOI) and the U.S. Fish and Wildlife Service (FWS), in conjunction with numerous partners. The MBTA has catalyzed progress over the decades to minimize impacts to birds from human activity, including from industrial operations. The longstanding policy of Democratic and Republican administrations that the MBTA prohibits incidental take has led to valuable partnerships and the development of practices, technology, and guidelines that has saved millions of birds from preventable impacts.

The December 2017 M-Opinion and January 2021 rule set back decades of progress in protecting and conserving birds, undermining our treaty obligations, placing our bird populations at unprecedented risk, and injecting new uncertainty under the law. Shortly after the December 2017 M-Opinion was released, 17 former high-ranking DOI officials, serving under every Republican and Democratic administration from President Nixon to President Obama, asked the Trump Administration to suspend its reinterpretation of the law. Further, the legal opinion was later ruled unlawful by the U.S. District Court for the Southern District of New York, which found that the reinterpretation “runs counter to the purpose of the MBTA”. The decision unambiguously found that the M-Opinion does not align with the intent and the letter of the law passed by Congress.

Despite the objections from former Interior officials and the U.S. District Court ruling, the previous Administration continued the rulemaking process guided by DOI’s unlawful M-

Opinion. Further, 25 state governments, numerous Tribal governments, and three flyway councils objected to the proposed rule and raised concerns about lack of Tribal consultation. The Canadian government wrote of concerns about how the rule would impact the United States-Canada bilateral treaty and shared migratory birds. Hundreds of organizations and hundreds of thousands of individuals also submitted comments against the rule.

We are glad to see that DOI revoked the January 2021 rule and will return to the longstanding interpretation of the MBTA. We also applaud the simultaneous publication of the Director's Order and the Advance Notice of Proposed Rulemaking to codify incidental take protections and consider an authorization program for incidental take. We believe that DOI can and should simultaneously protect migratory birds while offering stakeholders regulatory certainty. DOI should establish a new and reasonable permit framework through this rulemaking, centered around a general permit that would advance best management practices and provide legal coverage for categories of activities that incidentally take birds. We urge the Department to move forward with this rulemaking and publish a proposed rule. Further, the bipartisan Migratory Bird Protection Act (H.R. 4833) provides a similar framework for consideration during this rulemaking. While we believe that FWS has full authority to establish a permitting program, complementary legislation can help provide additional stability and certainty for bird populations and the regulated community.

Migratory birds provide tremendous benefit to our country and to our constituents, yet scientific reports have documented significant declines in these populations, including 3 billion birds lost since 1970, and findings that two-thirds of our birds are threatened by climate change. We need to take further action to help secure these populations by upholding and improving the tools that help protect and conserve birds.

We applaud your leadership in restoring the commitment to protecting and sustaining our migratory bird populations and upholding our international treaty obligations. Thank you again for your leadership and action to protect migratory birds, and for your consideration of our recommendations moving forward.

Sincerely,



Alan Lowenthal  
Member of Congress

/s/

Brian Fitzpatrick  
Member of Congress

/s/

Salud Carbajal  
Member of Congress

/s/

Thomas R. Suozzi  
Member of Congress

/s/

Jan Schakowsky  
Member of Congress

/s/

Earl Blumenauer  
Member of Congress

/s/

Katie Porter  
Member of Congress

/s/

Eleanor Holmes Norton  
Member of Congress

/s/

Mark Takano  
Member of Congress

/s/  
Adriano Espaillat  
Member of Congress

/s/  
Sharice Davids  
Member of Congress

/s/  
Linda Sánchez  
Member of Congress

/s/  
Zoe Lofgren  
Member of Congress

/s/  
Steve Cohen  
Member of Congress

/s/  
Mike Quigley  
Member of Congress

/s/  
Mike Thompson  
Member of Congress

/s/  
Tom Malinowski  
Member of Congress

/s/  
Carolyn B. Maloney  
Member of Congress

/s/  
Tony Cárdenas  
Member of Congress

/s/  
Brendan F. Boyle  
Member of Congress

/s/  
Suzanne Bonamici  
Member of Congress

/s/  
Jared Huffman  
Member of Congress

/s/  
Ann McLane Kuster  
Member of Congress

/s/  
Ruben Gallego  
Member of Congress

/s/  
James P. McGovern  
Member of Congress

/s/  
Mark Pocan  
Member of Congress

/s/  
Raúl Grijalva  
Member of Congress

/s/  
Gerald. E. Connolly  
Member of Congress

/s/  
Betty McCollum  
Member of Congress

/s/  
Jesús G. “Chuy” García  
Member of Congress

/s/  
Jerry McNerney  
Member of Congress

/s/  
Jerrold Nadler  
Member of Congress

/s/  
Dina Titus  
Member of Congress

/s/  
Ted Lieu  
Member of Congress

/s/  
Sara Jacobs  
Member of Congress

/s/  
Donald S. Beyer Jr.  
Member of Congress

/s/  
A. Donald McEachin  
Member of Congress

/s/  
Rick Larsen  
Member of Congress

/s/  
Ed Case  
Member of Congress

/s/  
Peter A. DeFazio  
Member of Congress

/s/  
Mark DeSaulnier  
Member of Congress

/s/  
Jimmy Panetta  
Member of Congress